



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Psychology, Dept. of Health Professions
VAC Chapter Number:	18 VAC 125-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Psychology
Action Title:	Continuing Education Requirements
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In compliance with a statutory mandate, the Board is proposing continuing education requirements for the renewal of psychologist licensure. As required by the statute, the proposal includes a requirement of 14 contact hours of continuing education courses each year, for a total of 28 hours for each biennial licensure renewal. The proposal includes a provision for an inactive licensure status to accommodate individuals who are not actively practicing psychology and who may be unable to meet the continuing education requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Board is mandated under a new statutory requirement set forth under § 54.1-3606.1 to establish requirements for continuing education of psychologists.

§ 54.1-3606.1. Continuing education.

A. The Board shall promulgate regulations governing continuing education requirements for psychologists licensed by the Board. Such regulations shall require the completion of the equivalent of fourteen hours annually in Board-approved continuing education courses for any license renewal or reinstatement after the effective date.

B. The Board shall approve criteria for continuing education courses that are directly related to the respective license and scope of practice of school psychology, applied psychology and clinical psychology. Approved continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders. Any licensed hospital, accredited institution of higher education, or national, state or local health, medical, psychological or mental health association or organization may submit applications to the Board for approval as a provider of continuing education courses satisfying the requirements of the Board's regulations. Approved course providers may be required to register continuing education courses with the Board pursuant to Board regulations. Only courses meeting criteria approved by the Board and offered by a Board-approved provider of continuing education courses may be designated by the Board as qualifying for continuing education course credit.

C. All course providers shall furnish written certification to licensed psychologists attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of four years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of four years the written certification issued by any course provider. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary to ensure compliance with continuing education requirements.

D. The Board shall have the authority to grant exemptions or waivers or to reduce the number of continuing education hours required in cases of certified illness or undue hardship.

The web site address for located the text of this statute is <http://leg1.state.va.us>.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

By enacting the new mandate for continuing education, the 2000 General Assembly determined that such a requirement is essential to protect the health, safety and welfare of the public. The statute stipulates that the regulations require fourteen hours per year of Board-approved continuing education, that the education be in the form of courses, and that the courses relate directly to the respective license and scope of practice of the three licenses issued by the board. It also stipulates that the courses for clinical psychologists emphasize the diagnosis, treatment and care of patients with moderate and severe disorders. In compliance with this mandate, the Board adopted a proposed regulation which includes the 14-hour requirement set forth in statute, lists categories of course providers that will have automatic approval, establishes requirements and a fee for becoming a Board-approved course provider, and includes instructions for documentation of compliance. The Board has included a provision for an inactive licensure status to allow practitioners who are not actively practicing psychology in Virginia to defer the continuing education requirement until they reactivate the license.

During discussion of the upcoming legislation, it was the Board's intention to establish a variety of acceptable activities and include a category for independent self-study to alleviate some of the financial and geographic burdens that the requirement would place on licensees. However, the legislation specifically mandates that the education be presented in the form of "courses." The Board considered the unavailability of university coursework to individuals who are not enrolled in a degree program and the expense and difficulty of attending a professional association conference. Although independent self-study is precluded by the law, the Board developed a definition of the word "course" to include supervised training under a Board-approved provider. To further increase the accessibility of courses, the Board also provided for half of the hours to come from non face-to-face activities such as internet courses, as long as the other requirements are met.

The second problem the Board addressed was the mechanism for approving providers of continuing education courses. The Board considered the administrative burden of having to approve the provider for every continuing education credit documented by its licensees. To resolve the problem, the Board developed a list of institutions and organizations which are recognized as providers of education for psychologists, such as universities, hospitals and government agencies. These institutions commonly have established training mechanisms in place with standards for content and quality. The Board also plans to develop a list of established professional organizations such as the American Psychological Association, the Virginia Academy of School Psychologists and the American Medical Association which will be recognized by the Board as continuing education providers. Such a list could be placed on the internet for easy access by licensees and updated as additional organizations are included. The Board will still have to consider private providers individually, and to that end has proposed criteria for approval in the regulation.

The implementation of continuing education requirements creates difficulties for individuals who choose to maintain the license, but are no longer practicing due to retirement, illness, or relocation

to another jurisdiction. To accommodate these individuals, the Board proposes developing an inactive licensure status to waive the continuing education requirement for individuals who are not practicing. The Board proposes establishing a fee that is half that for active licensure renewal. Individuals who wish to reactivate their licenses will be required to pay the active licensure renewal fee and document completion of the continuing education hours for each inactive year, not to exceed four years.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The Board is proposing new sections outlining continuing education requirements, requirements for approved course providers and instructions for documentation of satisfaction of the requirements. The Board is also proposing amendments to existing sections covering licensure renewal and late renewal to provide for inactive licensure status. Proposed amendments also set forth the requirements for documenting continuing education hours in the event of late renewal or reinstatement.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages to licensees:

Licensees will benefit from exposure to advances in psychological theory and methods. Individuals who practice in isolation with little peer interaction will benefit from expanding their network of colleagues and learning different approaches to treatment issues. Training in ethics will reinforce awareness of situations which may lead to disciplinary actions.

Disadvantages to the licensees:

Although some licensees will be able to count the hours already provided by their agency or institution, clinical psychologists, which constitute the greatest number of licensees, primarily work in private practice settings and will have to bear the expense of the training. The cost will range from \$10 to \$20 per contact hour, but could be more costly if the licensee chooses continuing education activities which require travel and hotel expenses. Although half of the required hours must be face-to-face, the Board members will accept distance learning with an interactive component, such as teleconferencing, as meeting the requirement. The cost to the Board to monitor compliance with the requirement will be borne by licensees in their renewal fees. Additionally,

licensees who do not comply with the requirement will be subject to disciplinary action by the Board.

Advantages to the public:

The public will have the advantage of knowing that the practitioners who treat them are staying abreast of advances in the profession. Reinforcement of training in professional ethics and skills in handling difficult situations may avert potential problems for clients. Some individuals and organizations will benefit financially by becoming providers of continuing education programs.

Disadvantages to the public:

Employers may incur additional costs if they provide continuing education or reimburse expenses for their staff.

Advantages or disadvantages to government agencies:

Employees of government agencies are exempted by law from the licensure requirement. Those agencies that employ licensed psychologists may incur additional costs if they choose to bear the expense of sending staff to conferences, pay for courses, or hire private individuals to present courses on-site. The Board will incur additional costs to monitor compliance of licensees, and to hold disciplinary hearings for individuals who do not comply with the requirement.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Estimated Impact of the Regulations

A. Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board of Psychology must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$1000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

There will be some additional on-going costs for review and approval of individual providers and for monitoring compliance of licensees with the requirements. The proposed fee for review and approval of providers was based on the estimated cost of staff time, per diems and travel expenses for board members, and data processing costs. Compliance monitoring will result in additional costs for the Board, depending on the number of licensees audited each year. Generally, less than 5% of licensees are audited for other boards within the Department of Health Professions. For an auditing range of 2% to 5% of licensees at an estimate of 15 minutes per file reviewed at \$50 per hour, the cost to the Board could range from \$500 to \$1250 per renewal period, plus \$100 to \$350 in mailing costs to notify applicants that they are being audited. Additional costs will be incurred to hold disciplinary hearings for individuals who are not in compliance with the requirement. Each hearing will cost approximately \$550. It is likely that there will also be an increase in disciplinary hearings to individuals who are found not to comply with the regulations. There is no estimate of what percentage of licensees will not comply with the requirement.

B. Projected cost on localities:

Employees of government agencies are exempted by law from the licensure requirement. Agencies may elect to provide continuing education programs for their licensed staff. However, this would depend on the policy of individual agencies and is not influenced by the Board of Psychology.

C. Description of entities that are likely to be affected by regulation:

Licensed applied psychologists, clinical psychologists, and school psychologists will be affected by the regulation.

D. Estimate of number of entities to be affected:

There are approximately 1918 licensed clinical psychologists, 105 licensed school psychologists and 56 licensed applied psychologists who will be affected by these regulations.

E. Projected cost of the regulation for affected individuals.

Individuals employed by agencies and institutions will be more likely to have their education provided at the work site or have the opportunity to be reimbursed for their educational expenses. Licensees who are employed in private practice settings where free training is not likely to be offered will be required to pay for their own courses. The cost per contact hour for workshops offered by professional associations or college courses ranges from approximately \$10 to \$20 per contact hour, which would range from \$300 to \$600 each biennium to cover the full 28-hour requirement. Individuals who attend professional association meetings are sometimes able to have all or part of the cost covered by their employers. The Board addressed other training venues which would not involve travel, such as distance learning, internet courses and interactive

tele-training, and developed the regulation to allow for a variety of course settings. These types of training range from \$15 to several hundred dollars per course, depending on length and complexity of the material.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 125-20-120. Biennial renewal of licensure.

- The Board proposes amending this section by including a requirement to document continuing education and adding an inactive licensure status. In order to allow a full renewal period for licensees to obtain the required hours, compliance will not be required to be documented until after the 2004 renewal date. Therefore, licensees will begin accruing the hours following their renewal in 2002. The inactive status will provide an exemption to the continuing education requirement for individuals who, for reasons such as illness, family leave or relocation to another state or country, are not actively practicing psychology in Virginia.

18 VAC 125-20-121. Continuing education course requirements for renewal of an active license.

- This new proposed section defines the term “course” and states the hour requirement as set forth in statute. This section also sets forth a minimum of three hours per biennium in ethics and requires that half the hours be earned in face-to-face group educational experiences. Interactive video conferencing would be accepted as face-to-face, but a non-interactive electronic course would only be accepted as a non face-to-face activity. This section also reiterates the statutory requirement that the training must be relevant to the scope of practice for the category of licensure held and that courses for clinical psychologists emphasize moderate and severe mental disorders. The proposed regulation provides for exemption or extension of the requirement for special circumstances.

18 VAC 125-20-122. Continuing education providers.

- This new proposed section lists types of institutions and organizations that the Board will recognize as approved providers of continuing education and sets forth a mechanism for individual providers to be considered for approval. The two-year time limit of the approval is proposed to enable the Board to periodically monitor the content and quality of the courses. This section also sets forth a requirement for monitoring attendance, maintaining records of attendees, and providing a certificate to all attendees.

18 VAC 125-20-123. Documenting compliance with continuing education requirements.

- This new section outlines the type of documentation that the Board will accept when monitoring compliance of licensees and sets forth a maintenance requirement for that documentation.

18 VAC 125-20-130. Late renewal; reinstatement, reactivation.

- The Board proposes amendments to this section to establish a requirement for documentation of continued competency hours for individuals who are reinstating either a lapsed or inactive license. A title change is also proposed for this section.

18 VAC 140-20-160. Grounds for disciplinary action or denial of a license.

- Failure to comply with the continued competency requirements is added as a basis for disciplinary action.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Prior to submission of the legislation enacting the continuing education requirement, the Board invited representatives of the three Virginia psychology academies to discuss implications of the bill and implementation of the requirement. Members of the Board's Regulatory Committee studied the continuing education requirements of other state psychology boards and discussed the upcoming legislation with their peers at professional association meetings. Representatives of the associations were invited to attend meetings to join in discussion about the requirements. Although the Board was interested in a model that would allow some credit for independent study for professional activities such as publication of a professional article, the statute specifies that only courses will be acceptable. The statute also specifies the number of hours of coursework that will be required but gives the Board some discretion in the approval of course providers and in establishing course criteria.

The Board's original draft limited the approval to associations of mental health providers. After several practitioners expressed concern that the valuable training they received in other areas may not be accepted (such as gerontology for geriatric psychologists, or nutrition for practitioners who work with eating disorders), the Board extended the approval to include associations of health and psychoeducational providers. The Board also responded to comment that many psychologists obtain continuing education in forensics, which is not offered by health professionals or organizations. The Board included a provision to accept courses in forensic psychology, which would be related to the scope of practice of psychologists, in accordance with statutory requirements. The Board also corrected an omission which was noted by the Attorney General's Office to include a provision to accept courses offered by licensed hospitals. Courses offered by public hospitals are included under the provision for government agencies.

The Board recognized that the word “course” as written in the statute could be interpreted to mean classic university for-credit course work, which psychology graduate programs will not offer to non-matriculated individuals. The Board was advised by the Attorney General’s Office that it could develop a definition of “course” to include other types of organized activities. The definition originally drafted required that all of the hours be face-to-face experiences with the instructor. The Board recognized that contemporary education is increasingly provided in a distance learning milieu, which is easily accessible and can be of good quality. However, the Board also acknowledged the value of peer interaction, especially for practitioners who practice in isolation with little exchange of ideas with other professionals. The Board is proposing that at least half of the hours come from face-to-face experiences. This will encourage peer interaction, while providing the flexibility to obtain other types of training. The requirement for Board approval of the providers will provide some assurance of the quality of the courses.

Representatives of the professional associations reported an interest in having the regulations include a requirement for some training in ethics. The Board agreed that reinforcement of training in professional ethics would be beneficial to both practitioners and clients, by reminding psychologists of the importance of maintaining professional boundaries. The Board reviewed the requirements of 13 states that require ethics training as a component of their continuing education requirement, which ranged from 1 to 6 hours per biennium. The Board considered that requiring too many hours in this area, which is somewhat limited in scope, could result in redundancy for the licensees. The Board is proposing an average number of hours (three) within this category.

Although the statute authorizes registration of courses, the Board recognized that registering every course would create an excessive administrative and financial burden. The Board rejected the alternative to register courses, and included course criteria in the regulation to guide licensees and providers in their selection of course material.

In establishing a fee for inactive licensure and requirements for reactivation of a license, the Board considered the regulations of other boards in the agency and the agency’s Principles for Fee Development. The Board is proposing an inactive license renewal fee of half the active licensure fee and a reactivation requirement of a maximum of four year’s continuing education, which is consistent with the requirements of other boards in the agency.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Three clinical psychologists commented that the majority of their practice and training is in the area of law and forensics and not clinical psychology. The board agreed to add a provision to accept training in forensic psychology but did not add a provision for training in general law, which would not be in compliance with statute.

One licensee requested that the board give credit for teaching courses and publishing papers. Although the Board had interest in allowing credit for self-directed activities, the statute restricts the acceptable activities to courses.

One licensee asked the Board to accept the Board of Education's license and national certification in school psychology as evidence of having met the requirements in the Board's regulations. The Board determined that documentation of continuing education acquired for another license or certification would be accepted if it meets the requirements in the Board's regulations, but that automatic recognition of another license or certification would require the Board to stay abreast of the CE requirements of other organizations which is not possible. All licensees who are audited will be required to submit documentation of courses that meet the regulations, which for some individuals will require duplication.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Prior to the proposal of the legislation, the Board met with representatives of Virginia's psychology academies to ascertain the intent of each subsection and to discuss some logistical concerns regarding development of the regulation and administration of the program. Prior to beginning work on the proposed regulations, the Board members carefully reviewed the legislation and conferred with Counsel to assess the degree of discretion the Board was allowed to establish requirements. Board members reviewed the regulations of other states and invited representatives of the Virginia Academy of Clinical Psychologists to discuss alternative scenarios in an open session, which had been noticed to the Board's public participation list. The Board members received positive comments from colleagues regarding the clarity and sensibility of the language which was adopted. Prior to adopting the regulation, the Board submitted the draft to the Attorney General's Office and made changes based on feedback received. To solicit additional input from all of its licensees, the Board plans to publish the proposed regulation in its upcoming newsletter. This is a much larger audience than the Board would reach through its public participation mailing list.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The proposed amendments to these regulations will be reviewed following publication in the Register and the 60-day public comment period. If there are any oral or written comments received, the Board will consider revisions to the proposal prior to adoption of final regulations.

HB 452 requires that this regulation be implemented by April 7, 2001. Public Participation Guidelines of the Board of Psychology (18 VAC 125-20-10 et seq.) require a thorough review of regulations each biennium. Therefore, the Board will review this set of regulations in 2003 and will bring any recommendations for amendments to the full board for consideration.

In addition, the Board receives public comment at each of its meetings and will consider any request for amendments. Petitions for rule-making also receive a response from the Board during the mandatory 180 days in accordance with its Public Participation Guidelines.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will have no impact on the authority and rights of parents in the education, nurturing or supervision of their children. They may encourage increased confidence for licensees who obtain additional training which they may not have otherwise pursued. The amendments may enhance the marital commitment for clients who may benefit from a practitioner who has chosen training in family systems theory. Disposable income of practitioners who are required to obtain the training may decrease slightly depending on the type of training selected.